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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,849	12/30/2003	Richard Spink	P214397	9442

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EXAMINER

SPAHN, GAY

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,849

Applicant(s)

SPINK, RICHARD

Examiner

Lisa M. Saldano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-14 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5-11 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/10/2005
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Newly submitted claim 12 and 13 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the outrigger floatation member as illustrated in Figs.13 and 14 was not elected by original presentation as determined from original claim language.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 12 and 13 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Stubbs (2,693,161).

Regarding claims 1 and 7, Stubbs discloses a buoyant seaweed-collecting fence 8 that is capable of inhibiting movement of marine vehicles across a barrier line in a body of water.

Stubbs discloses first and second barrier sections comprising floatation members 20 that are

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elongated hollow rigid pipe. Stubbs further discloses a coupler system 19 at the juncture of the barrier sections whereby the floatation members may be placed in parallel side-by-side arrangement or in end-to-end arrangements. Hinged barrel portions 21 with hinge pins 23 permit movement of the barrier sections in these arrangements. The floatation members support a fence system comprising mesh wire 24 and posts 9. The invention inherently comprises a stabilizing system that maintains the fence system in a desired orientation relative to the body of water (see Figs. 2&3). The coupler system 19 inherently comprises a spacing portion that resiliently opposes movement of the first and second barrier sections relative to one another.

Regarding claim 5, flotation members 20 are cylindrical and the coupler system 19 comprises a spacing portion. As broadly claimed by the applicant, an effective length of the spacing portion is at least as long as a diameter of the floatation.

Regarding claim 6, the coupler system 19 comprises barrel portions 21 that function as first and second pin tubes that define pin passageways for hinge pins 23.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8, 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stubbs as applied to claims 1 and 7 above, further in view of Lundin (4,432,874).

Stubbs discloses a fence as described above comprising floatation members and a coupler system.

However, Stubbs fails to disclose a coupler system comprising a chain within a resilient material.

Lundin discloses a flexible collecting rope comprising floats 5, a chain 9 and a layer 14 of plastic or rubber material (see column 3, lines 1-15). Lundin discloses that the layer 14 protects the chain 9. The rope is for use in collecting of oil or other similar material from the surface of water (see column 1, lines 5-10). Optionally, Lundin illustrates a coupler system 12,13 used to connect portions of chain 9 to one another.

Regarding claim 9, please refer to Lundin's Fig.1. Portions of chain 9 on either side of a section of collecting rope function as cables extending through the floatation members 5 of those adjacent portions of collecting rope. The chain assembly within the middle portion of the illustrated invention in Fig.1 forms a continuous connection of other floatation members along the entire length of the barrier system.

Regarding claim 14, Lundin discloses spikes 6 (see column 2, lines 10-20) that, as broadly claimed by the applicant, may function as piercing strips arranged to engage a marine vessel.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the fence of Stubbs to incorporate the flexible collecting rope structure taught by Lundin, because Lundin clearly illustrates that portions of the collecting rope are used to attach other floatation members to one another, the other floatation members being portions of collecting rope as well. Motivation exists to modify the Stubbs inventions with elements of the

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Lundin invention because the Stubbs and Lundin inventions are analogous art inasmuch as they are both used as partitions on the surface of a body of water.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stubbs and Lundin, as applied to claim 9 above, and further in view of Clark (4,738,563).

Stubbs and Lundin disclose features as described above.

However, Stubbs and Lundin fail to explicitly disclose that the invention may comprise at least one upright fence post and at least one canted fence post.

Clark discloses a barrier system comprising first and second floatation members 7 containing buoyant material. The cable 10 between adjacent floats 7 comprises a coupling system wherein the floatation members are flexibly connected to one another and may be placed in parallel side-by-side arrangement for storage or end-to-end arrangement to form a barrier line by virtue of the barrier systems flexibility formed by net 3, cable 10 and chains 9 (see Fig.1).

Regarding claim 10, Clark discloses that the fence posts 2 may assume an upright position or a canted or tilted position (see Fig.2). It is feasible that one of two different posts in the same fence may assume an upright position while the second of the different posts may assume a canted position, simultaneously. This depends of the water forces and currents of the water body hosting the marine fence. Netting 3 placed between the posts 2 completes the fence.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify portions of the invention of Stubbs to assume positions as suggested by Clark because Stubbs and Clark both disclose marine fences that, when long enough, can easily assume positions such that one of the posts of either of the fences is canted and one is upright. The

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inventions of Stubbs and Clark are analogous art inasmuch as they are both used to contain elements within a predetermined area of a body of water.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stubbs, as applied to claim 1 above, further in view of Russo, III (5,480,262).

Stubbs discloses the invention described above.

However, Stubbs fails to disclose weights supported by posts.

Russo, III discloses an oil containment boom 20, which functions as a fence, that floats upon the surface of a body of water (see Fig.1). The boom comprises counterweights 76 that comprise ballast 78 (see Fig.2 and column 6, lines 24-31).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Stubbs to comprise counterweights, as taught by Russo, III because the counterweights provide balance for the floating fence structure.

Response to Arguments

8. Applicant's arguments with respect to claims 1 and 5-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lms



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